

MANDATE

**United States Court of Appeals
For the First Circuit**

USDCPR
Judge Fusté

No. 06-1562

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#97

INSTITUTO DE EDUCACION UNIVERSAL,

Plaintiff, Appellant,

98-2225 (RLA)

ANGEL RUIZ-RIVERA,

Plaintiff,

v.

U.S. DEPARTMENT OF EDUCATION, ET AL.,

Defendants, Appellees.

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U.S. COURT OF APPEALS
FOR THE FIRST CIRCUIT
BOSTON, MASSACHUSETTS

Before

Torruella, Circuit Judge,
Selya, Senior Circuit Judge,
and Lynch, Circuit Judge.

JUDGMENT

Entered: May 11, 2007

Appellant Instituto de Educacion Universal (IEU) appeals from the district court's denial of its motion for relief from judgment, filed under Fed. R. Civ. P. 60(b). After carefully considering the parties' briefs and the record, we can see no error in this ruling. First, and even assuming that the district court never considered the motion's merits, the motion would have had to have been denied since it merely rehashed the issues that the court already had resolved. See United States v. One Rural Lot No. 10,356, 238 F.3d 76, 78 (1st Cir. 2001) (per curiam) ("[a] motion for relief from judgment cannot be used merely to reargue a point already decided") (internal quotation marks and citation omitted). Second, all of

MANDATE

IEU's appellate arguments concerning why Rule 60(b) relief was warranted are, in reality, aimed at the merits of the petition for review. It therefore is plain that IEU is attempting to use this pending appeal as "a surrogate for a seasonable appeal of the underlying judgment." See Karak v. Bursaw Oil Corp., 288 F.3d 15, 19 (1st Cir. 2002). Appellant cannot do this. Id.

Summarily affirmed. See Local Rule 27.0(c).

By the Court:

Richard Cushing Donovan, Clerk.

ERIC H. DEHNINGER

By: _____ Appeals Attorney.

**Certified and Issued as Mandate
under Fed. R. App. P. 41.**

Richard Cushing Donovan, Clerk

M. Reed

Deputy Clerk

Date: 5/20/08

[cc: Angel Ruiz-Rivera, Migdali Ramos-Rivera, Esq., Julio Morillo-Limardo, Esq., Isabel Munoz-Acosta, AUSA, Anthony Alan Yang, Esq., Barbara Biddle, Esq., Peter Keisler, Esq.]